IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 36501 of 2007(U)

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PETITIONER:

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SMT.DAINABI, W/O.A.M.MOHAMMED SHAFI,
SIRAJ MANZIL, INDIRA NAGAR, KSHB COLONY,
CHENGALA (PO), PIN-671 541.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS:

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1. THE ASSISTANT REGISTRAR/ARBITRATOR-
CUM-SALES OFFICER. THE KASARAGOD DISTRICT
CO-OPERATIVE BANK LTD., KASARAGOD.

2. THE BRANCH MANAGER,
KASARAGOD DISTRICT CO-OPERATIVE BANK LTD.,
CHERKALA BRANCH, KASARAGOD.

FOR R1 GOVERNMENT PLEADER, SMT.ANU SIVARAM
FOR R2 STANDING COUNSEL, SRI T.R.HARIKUMAR AND SRI V.G.ARUN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN, J.**

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W.P.(C) No.36501 of 2007-U

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Dated this the 11th day of December, 2007

**J U D G M E N T**

The petitioner obtained a loan for business purpose. Arbitration award was passed on the instance of the second respondent Co-operative Bank. Thereafter, the petitioner moved the District Legal Service Authority, Kasargod, as L.C.A No.520/2007.

2. This writ petition is filed challenging the sale notice on the ground that the matter is gaining the attention of DLSA and that the petitioner is prepared to repay the amounts in instalments. The plea before the DLSA also appears to be a request for instalments.

3. The petitioner cannot be permitted to have different proceedings before different fora in relation to the same

subject matter. The learned counsel for the petitioner, after obtaining the instructions of her party, states that the petitioner is giving up the proceedings before the DLSA and would abide by orders issued by this Court granting instalments.

4. According to the petitioner, her husband was employed abroad and has returned with no avocation as of now. However, the loan was availed for business purposes. Having found that there is no jurisdictional error or legal infirmity in the impugned proceedings, the request of the petitioner for relief by way of an instalment facility can be considered.

5. Having regard to the total amount involved and the contentions of the petitioner, her request for instalments could be granted if she remits Rs.50,000/- (rupees fifty thousand) on or before the last working day of December, 2007 and, further amounts at the rate of Rs.25,000/- (rupees

twenty-five thousand) per month, payable on or before the last working day, commencing from January, 2008.

In the result, this writ petition is disposed of directing that if the petitioner makes remittances in terms of the instalments schedule stated above, the impugned distress action will stand deferred and the petitioner will be permitted to pay off the entire outstandings, in instalments, as stated above. However, if the petitioner defaults in remitting any of the instalments as aforesaid, the benefit of this judgment will stand recalled automatically and this writ petition will stand dismissed.

**THOTTATHIL B. RADHAKRISHNAN,**
**Judge**

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